

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**Priscilla Sterling, Raine Becker, Shawn
Miller, and John Bennett, individually and on
behalf of all others similarly situated
Plaintiffs**

v.

Civil No. 3:22-cv-531-KHJ-MTP

**The City of Jackson, Mississippi; Chokwe A.
Lumumba; Tony Yarber; Kishia Powell;
Robert Miller; Jerriot Smash; Siemens
Corporation; Siemens Industry, Inc.; and
Trilogy Engineering Services LLC**

Defendants

**JERRIOT SMASH’S MOTION FOR JUDGMENT ON THE PLEADINGS TO DISMISS
THE AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF
AND MONEY DAMAGES AND/OR FOR QUALIFIED IMMUNITY**

Jerriot Smash, through counsel and pursuant to Federal Rule of Civil Procedure 12(c), files this Motion for Judgment on the Pleadings and/or Qualified Immunity, seeking dismissal of Counts I, II, and V of Plaintiffs’ Amended Class Action Complaint for Injunctive Relief and Money Damages with Jury Trial Demand [Doc. 57] against him. In support of the requested relief, Smash states:

1. In the Complaint, Plaintiffs assert two claims for relief against Smash: (1) Count I: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – Bodily Integrity; and (2) Count II: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – State Created Danger. *See id.* at 77-81.

2. Each claim fails to state a claim upon which relief may be granted against Smash.

3. Plaintiffs fail to allege Smash participated in any conduct giving rise to Counts I and II. Regardless, Smash is entitled to the protection afforded by qualified immunity.

4. Furthermore, Plaintiffs have not alleged a state-actor coercion, and therefore, no violation of bodily-integrity.

5. The Fifth Circuit does not recognize a state-created-danger theory of liability.

6. Plaintiffs have also failed to state a claim for negligence (Count V) against Smash in his individual capacity, because Smash acted in the course and scope of his employment.

7. Accordingly, and for the reasons more fully set forth in his accompanying Memorandum in Support, Smash requests dismissal of Counts I, II and V against him.

RESPECTFULLY SUBMITTED, this the 14th day of July, 2023.

/s/ Terris C. Harris

TERRIS C. HARRIS

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which served a copy of the foregoing on all counsel of record.

/s/ Terris C. Harris

TERRIS C. HARRIS